IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3100 of 2006
to
FIRST APPEAL No. 3109 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER & 1 - Appellant(s)
Versus
PRAHALADBHAI FULCHANDBHAI – Respondent(s)

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Appearance :
MR KD PANDYA, AGP for Appellant(s) (In FA 3100 to 3103/06)
MS TANUJA KACHCHHI, AGP for Appellant(s) In FA 3104 to 3106/06)
MS KRINA P.CALLA, AGP for Appellant(s) In FA 3107 to 3109/06)
MR AJ PATEL for Respondent-Claimant(s) (In all First Appeals)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 04/12/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. These Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated April 29, 2005, rendered by the learned Assistant Judge and Special Judge (LAR), Ahmedabad (R) at Ahmedabad, in Land Acquisition Case No.270 of 1999 to Land Acquisition Case No.275 of 1999 with Land Acquisition Case No.211 of 1999 to Land Acquisition Case No.214 of 1999, by which the claimants have been awarded additional amount of compensation at the rate of Rs.23.40 ps. per sq.mt. for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.3/- per sq.mt. for irrigated lands and Rs.2/- per sq.mt. for non-irrigated lands, by his award dated March 30, 1999.

2. The Executive Engineer, Narmada Project, Goraiya Branch Canal, Gandhinagar, proposed to the State Government to acquire the lands of village Rampura, Taluka: Viramgam, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Rampura were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the official gazette on November 27, 1996. Thereafter, the land owners were served with notices under Section 4(1) of the Act. On service of notice, they opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Rampura, which were specified in the notification

published under Section 4(1) of the Act, were needed for the public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on July 2, 1997. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated March 30, 1999, offered compensation to the claimants at the rate of Rs.3/- per sq.mt. for irrigated lands and Rs.2/- per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they filed applications under Section 18 of the Act requiring the Special Land Acquisition

Officer to refer their cases to the Court for determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (R) where they were registered as Land Acquisition Case No.270 of 1999 to Land Acquisition Case No.275 of 1999 with Land Acquisition Case No.211 of 1999 to Land Acquisition Case No.214 of 1999.

3. On behalf of the claimants, witness Narsinhbhai Lavjibhai Patel was examined at Ex.26. The witness claimed that the lands acquired were highly fertile as a result of which, the claimants were able to raise different crops in three different seasons. According to this witness, each claimant was earning the net income of Rs.35,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces such as cumin seeds, cotton, Juwar, millet, wheat, etc. The witness further mentioned before the Court that his village Rampura was fully developed

and that Kadi-Viramgam, Viramgam-Becharaji and Rampura-Detroj roads were passing through his village. It was claimed by the said witness that the lands of village Kanz and the lands situated in his village were similar in all respects including fertility but from the viewpoint of development, his village was more developed than village Kanz. The witness further stated that the boundaries of his village and village Kanz were common. The witness produced the previous award of the Reference Court relating to the lands of village Kanz at Ex.29 for consideration of the Court and claimed that the claimants should be awarded compensation on the basis of the said award. The witness further stated that the lands of village Detroj were situated quite nearby the acquired lands and had also same fertility as that of the lands acquired in the instant case. After making that assertion, the witness produced the previous award of the Reference Court relating to the lands of

village Detroj at Ex.30. Though this witness was cross-examined at length on behalf of the appellants, nothing substantial could be elicited nor assertion made by him that the boundaries of village Kanz and his village were common and that the lands of village Kanz were similar in all respects to the lands acquired in the instant case could be demonstrated to be untrue.

4. On behalf of the appellants, witness Shashikant Punamchand Mahant, who was then serving as Assistant Engineer in Narmada Nigam, was examined at Ex.28. In his examination-in-chief, it was mentioned by the said witness that he was deposing before the Court on the basis of record available with him. It was asserted by the said witness that after taking into consideration all the relevant facts, the Special Land Acquisition Officer had determined the market value of the lands acquired and therefore, the claimants were not entitled to enhanced

compensation. However, in his cross-examination, it was admitted by the said witness that similar crops were being raised on the lands of village Kanz, village Rampura and village Detroj. This witness had to admit in his cross-examination that the lands of village Kanz and village Detroj were similar in all respects.

5. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village Kanz produced at Ex.29 and previous award of the Reference Court relating to the lands of village Detroj produced at Ex.30 furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. In the ultimate analysis, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.23.40 ps. per sq.mt. by the impugned award, giving rise to

these Appeals.

6. This Court has heard Mr.Krunal D.Pandya, learned Assistant Government Pleader and Mr.A.J.Patel, learned counsel for the claimants at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants which includes the oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though the witness for the claimant could not make good his assertion that each claimant was earning Rs.35,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces, there is no manner of doubt that the lands acquired were highly fertile and that different crops were being raised on the lands. This fact stands established from the contents of Village Form No.7/12 produced by the claimants at Ex.16 to Ex.25. The record does not indicate that the claimants had claimed enhanced compensation on yield basis

or on the basis of comparable sale instances. What was relied upon by the claimants was two awards of the Reference Court relating to the lands of adjoining villages. The first award related to the lands of village Kanz, Taluka: Viramgam, District: Ahmedabad. It was produced at Ex.29. A perusal of Ex.29 indicates that the lands of village Kanz were acquired for the public purpose of Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on March 8, 1996. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.2.25 ps. per sq.mt. for irrigated lands and Rs.1.50 ps. per sq.mt. for non-irrigated lands by his award dated July 29, 1998. Feeling aggrieved, the claimants had sought References. Accordingly, References were made to the District Court, Ahmedabad (Rural) where they were registered as Land Acquisition Case No.155 of 1999 to Land Acquisition Case No.172 of 1999. On

behalf of the claimants, witness was examined, who had produced the previous awards of the Reference Court relating to the lands of village Detroj and village Kanz. On appreciation of evidence, the Reference Court, by judgment and award dated October 30, 2004, awarded additional compensation to the claimants at the rate of Rs.23.40 ps. per sq.mt. During the course of hearing of the Appeals, Mr.A.J.Patel, learned counsel for the claimants, has produced a simple copy of the judgment dated November 27, 2006, rendered by the Division Bench of the High Court in First Appeal No.2846 of 2006 to First Appeal No.2863 of 2006 which indicates that the award rendered by the Reference Court in Land Acquisition Case No.155 of 1999 to Land Acquisition Case No.172 of 1999 relating to the lands of village Kanz was confirmed by the High Court.

8. It may be mentioned that though the claimants had relied upon the previous award of the

Reference Court relating to the lands of village Detroj, Taluka: Viramgam, District: Ahmedabad, and stated that the lands of village Detroj were similar in all respects to the lands acquired in the instant case, no evidence was adduced to indicate that village Detroj was adjoining to village Rampura from which the lands were acquired in the instant case. Therefore, this Court is of the opinion that the previous award of the Reference Court relating to the lands of village Detroj could not have been relied upon by the Reference Court for the purpose of determining the market value of the lands acquired in the instant case. However, the previous award of the Reference Court relating to the lands of village Kanz was the relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case.

9. It is well settled that the previous award of

the Reference Court relating to the lands of a village can be considered to be a good piece of evidence for the purpose of ascertaining the market value of similar lands subsequently acquired from the adjoining village. As observed earlier, relevancy of the previous award of the Reference court relating to the lands of village Kanz is well established by the claimants. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of village Kanz for the purpose of determining the market value of the lands acquired in the instant case. The calculation of the additional amount of compensation made by the Reference Court on the basis of the previous award of the Reference Court relating to the lands of village Kanz is not demonstrated to be erroneous by the learned Assistant Government Pleader.

10. On re-appreciation of the evidence adduced by the parties, this Court finds that correct findings of facts have been recorded by the Reference Court to which settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this Court to take a view different than the one which is taken by the Reference court on appreciation of evidence. Therefore, the Appeals which have no merits, deserve to be dismissed.

11. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this Judgment immediately.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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